

ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR09-948

AVERY DARNELL WILLIAMS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered FEBRUARY 24, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[CR2008-3546]

HONORABLE WILLARD PROCTOR,
JR., JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Appellant Avery Williams was convicted in a bench trial of theft of property for which he was sentenced, as a habitual offender, to eight years' imprisonment. He argues on appeal that there was insufficient evidence to sustain his conviction. We disagree and affirm his conviction.

In the early morning hours of June 14, 2008, Kirk White, the manager of Academy Sports in Sherwood, arrived to open the store and let the overnight cleaning crew out of the building. When Mr. White unlocked the doors, appellant and his co-worker, Joe Hill, were waiting at the door with their equipment, including two buffer machines and a box of replacement buffer pads. At trial Mr. White testified that he noticed "an urgent move to get a buffer outside." He could not remember whether it was appellant or Mr. Hill who pushed

the buffer out, however. In any event, as soon as the buffer went outside of the vestibule, the security sensors sounded. Mr. White pulled the buffer back inside and opened the box of buffer pads. The box contained hundreds of dollars worth of GPS units and electronics. He then opened the buffers and discovered that they had been “gutted” and stuffed full of store merchandise. An inventory of the items revealed that the total value of all of the merchandise in the box and buffers was just under \$5000.

Mr. White testified that appellant begged him not to call the police, offered to pay for the items, and claimed that Mr. Hill had nothing to do with the theft. Mr. White also testified that he reviewed the store’s video surveillance tape of the night and watched appellant get equipment from behind the gun counter that was found on the inventory receipt and move it to a place where it could not be seen on the camera. Appellant testified that Mr. White’s description of the events was a complete fabrication.

A motion to dismiss at a bench trial is a challenge to the sufficiency of the evidence. Ark. R. Crim. P. 33.1. In determining whether the evidence is sufficient, we view the evidence in the light most favorable to the State; thus, only the evidence that supports the conviction is considered, and the conviction will be affirmed if it is supported by substantial evidence. *Stone v. State*, 348 Ark. 661, 666, 74 S.W.3d 591, 594 (2002). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Atkinson v. State*, 347 Ark. 336, 345, 64 S.W.3d 259, 265 (2002). Credibility

determinations are made by the trier of fact, who is free to believe the prosecution's version of events rather than the defendant's. *See Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001).

Appellant's sole point on appeal is that the evidence was insufficient to convict him for theft of property. He claims that the State failed to introduce substantial evidence that he removed merchandise from Academy Sports. Specifically, he argues that Mr. White could not remember whether appellant or his co-worker, Mr. Hill, pushed the buffer outside.

Theft of property occurs when a person takes or exercises unauthorized control over the property of another person with the purpose of depriving the owner of the property. Ark. Code Ann. § 5-36-103(a)(1) (Repl. 2006). There is no requirement that the property be physically removed from the premises, only that the offender take the property or exercise unauthorized control over the property "with the purpose of depriving the owner" thereof. Ark. Code Ann. § 5-36-103(a)(1); *Wilson v. State*, 301 Ark. 342, 344, 783 S.W.2d 852, 853 (1990). Mr. White testified that, when he arrived at the store, appellant was attempting to leave the store with a buffer stuffed full of merchandise for which he had not paid, that he saw appellant on the video tape taking items from behind a counter that were later discovered in the inventory of items found in the box of buffer pads and in the buffers, that appellant offered to pay for the items after Mr. White caught him, and that appellant told him that Mr. Hill was not involved in the theft. The trial court could have inferred from this evidence that

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appellant was exercising unauthorized control over the property with the intention of taking it out of the store without paying for it. Viewing the evidence in the light most favorable to the State, we hold that there was substantial evidence to support the conviction.

Affirmed.

VAUGHT, C.J., and KINARD, J., agree.